**TAMAN RIMBA (MENTAKAB) SDN BHD**

**v.**

**SIN YEW POH TRACTOR WORKS**

HIGH COURT MALAYA, IPOH
JAMES FOONG J
[CIVIL APPEAL NO: 12-154-2001]
21 JANUARY 2002

***CIVIL PROCEDURE:*** *Jurisdiction - Sessions court - Jurisdiction to try action - Whether within local limits of jurisdiction assigned to it - Subordinate Courts Act 1948, s. 59(2) - High Court Practice Direction No. 4 of 1993*

***CIVIL PROCEDURE:*** *Res judicata - Application to transfer action from one sessions court to another on lack of territorial jurisdiction - Whether res judicata in view of earlier dismissal of application to transfer same action from one High Court to another*

***CIVIL PROCEDURE:*** *Transfer of case from one sessions court to another - Application for - Whether consent of Chief Judge required - Rules of the High Court 1980, O. 92 r. 3A - Subordinate Courts Rules 1980, O. 1 r. 4(1)*

***CIVIL PROCEDURE:*** *Stay of proceedings - Forum conveniens - Application for stay pending decision of Chief Judge of Malaya on transfer of action - Whether decision of Chief Judge would be rendered nugatory if stay not granted - Whether applicant would be prejudiced*

The plaintiff filed an action ('the action') against the defendant in the High Court at Ipoh for a claim of RM132,363.75. The defendant applied to transfer the action to the High Court in Kuala Lumpur on the basis that the agreement between the parties herein was made in Kuala Lumpur and that the defendant's registered office was in Kuala Lumpur. However, that was dismissed by the learned judge therein. Subsequently, the High Court ordered the action to be transferred to the Sessions Court in Ipoh as the fiscal jurisdiction of the sessions courts throughout the country to hear civil cases was increased to RM250,000. At the sessions court in Ipoh, the defendant applied to stay the proceedings of the action or alternatively to transfer the action to the Sessions Court in Kuala Lumpur on the basis that the sessions court in Ipoh lacked territorial jurisdiction to hear the action. That was dismissed by the sessions court which resulted in this appeal by the defendant. The plaintiff claimed that as the matter had been litigated and decided previously in the High Court at Ipoh, it was now *res judicata.*

**Held:**

**[1]** By virtue of s. 59(2) of the Subordinate Courts Act 1948, a sessions court shall have jurisdiction to hear and determine any civil or criminal cause or matter arising within the local limits of jurisdiction assigned to it. "Local limits" is set out in the High Court Practice Direction 4 of 1993 wherein the then Chief Judge assigned to the Ipoh Sessions Court territorial jurisdictional areas of Ipoh, Batu Gajah, Parit, Kampar, Sitiawan, Lumut and Pantai Remis. The cause or matter in the action which arose in either Mentakab or Kuala Lumpur were not the areas designated to the Ipoh Sessions Court. In view thereof, the Ipoh Sessions Court had no territorial jurisdiction to hear the action. (p 117 a-c)

**[2]** Though there was an application of a similar nature before the High Court, the circumstances were now different. Since the venue of this case was shifted from the High Court to the sessions court, a new factor for consideration had emerged, *ie*, the territorial jurisdictional limitation of the sessions court. That did not exist when the application was before the High Court. The learned judge of the High Court was not handicapped by jurisdictional limitation. In the circumstances, *res judicata* was not applicable. (p 118 e-f)

**[3]** By virtue of O. 93 r. 3A(3) of the Rules of The High Court 1980, the entire process for consideration of a transfer of a case from one court to another, be that the High Court or subordinate court, is taken over by the Chief Judges of the High Courts. Once consent is obtained from or refused by the respective Chief Judge, the presiding judge or magistrate of the case would only need to complete the mechanical process of either ordering or refusing an application for transfer before him. Such rule is also applicable to the subordinate court by virtue of O. 1 r. 4(1) of the Subordinate Courts Rules 1980 which demands adherence of the subordinate courts to the Rules of High Court when the Subordinate Courts Rules are silent. Therefore, as the consent from the Chief Judge in the action was not obtained, the sessions court did not have the authority to entertain the prayer for transfer of the action to Kuala Lumpur. The application for transfer must be referred to the Chief Judge of Malaya. (pp 119 a-i & 120 a-b)

**[4]** The situation of this case justified and warranted a stay of proceedings to be granted pending the defendant's application to the Chief Judge of Malaya for the said transfer. Otherwise the decision of the Chief Judge, if favourable, might be rendered nugatory and the defendant would be prejudiced. (p 120 e)

***Per curiam:***

**[1]** Unlike the High Court of Malaya sitting in various capital cities and towns in Peninsular Malaysia, the sessions courts throughout the country do not enjoy concurrent territorial jurisdiction of each other. The sessions courts are allocated territorial jurisdictional boundaries under s. 59(2) of the Subordinate Courts Act 1948. The High Court of Malaya does not have such restriction except that it cannot go beyond the shores of the Malay Peninsular, *vice versa*, with the High Court of Sabah and Sarawak whose territorial jurisdictional limits are confined to the two states in East Malaysia. But within each of the High Courts' territorial limits, a High Court judge has concurrent and co-ordinate jurisdiction to try cases as his counter-part in another city or town where there is a High Court. Thus, a judge sitting in the High Court of Malaya at Kuala Lumpur has the same power and right to try a matter or cause arising in another part of West Malaysia. This set up is different from the subordinate courts. The subordinate courts have the restriction of local limits of jurisdiction assigned to them. When a cause or matter is outside its local limits, then it has no jurisdiction to hear the substantive matter. (p 117 d-g)

*[Appeal allowed; order of sessions court set aside; application for stay allowed pending decision of Chief Judge of Malaya; application to Chief Judge to be made within seven days from date of this order.]*

**Case(s) referred to:**
*Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd [1995] 3 CLJ 783* ***(refd)***
*Greenhalgh v. Mallard [1947] 2 All ER 255* ***(refd)***
*Sova Sdn Bhd v. Kasih Sayang Realty Sdn Bhd [1988] 2 MLJ 268* ***(refd)***

**Legislation refered to:**
Rules of the High Court 1980, O. 92 r. 3A(3)
Subordinate Courts Act 1948, ss. 3, 59(1), (2)
Subordinate Courts Rules, O. 1 r. 4(1)

**Other source(s) referred to:**
*Halsbury's Laws of England*, 4th edn, para 437

*For the appellant - HR Goh; M/s Logan Sabapathy & Co*
*For the respondent - Paramjit Singh; M/s Mohd Noor & SY Lee*

*Reported by Usha Thiagarajah*

## JUDGMENT

**James Foong J:**

**Introduction**

This is an appeal by the defendant, in a civil action (the action) registered in the Sessions Court at Ipoh bearing number 52-152-1995, against the decision of the learned Sessions Court judge which rejected the defendant's application to: (a) stay proceedings of the action indefinitely and; (b) alternatively, to transfer the action to the Sessions Court in Kuala Lumpur.

**Background**

The background of this matter is simply these: On 3 February 1993, the plaintiff in the action had filed a claim against the defendant in the High Court at Ipoh for a sum of RM132,363.75 for services rendered by the plaintiff to the defendant in a project in Mentakab, Pahang. Subsequent to the filing of the defence, the defendant applied to the judge to transfer the civil suit to the High Court at Kuala Lumpur. The reasons tendered were: the agreement between the parties, formulated through various letters, was made in Kuala Lumpur and; the defendant's registered office is in Kuala Lumpur. After hearing arguments, Justice Mohtar Abdullah dismissed the defendant's application. There was no appeal filed against this decision.

On 13 March 1995, the High Court of Ipoh, by its own motion, ordered the civil suit be transferred to the Ipoh Sessions Court due to the enlargement of fiscal jurisdiction of the Sessions Courts throughout the country to hear civil cases not exceeding RM250,000. By this move, this action came to be landed in the Sessions Court in Ipoh till the present moment.

Once this action reaches the Ipoh Sessions Court, the defendant filed the application to stay of proceeding or alternatively, to transfer the action to the Sessions Court in Kuala Lumpur. The grounds given are as follows: (a) At all material time the defendant's registered address is and was in Kuala Lumpur. (b) Witnesses of both parties in the action are in Kuala Lumpur. (c) The facts on which the plaintiff's case is based have no relationship or connection with Ipoh. (d) And even the plaintiff's place of business is believed to be in Kuala Lumpur. With these reasons, the defendant stressed that the appropriate forum of convenience for trial of the action should be Kuala Lumpur.

The plaintiff opposed this application on ground of *res judicata*; that the matter had been litigated and decided previously in the High Court at Ipoh.

**Novel Point Raised By The Defendant**

Anticipating this objection from the plaintiff, the defendant now argues that *res judicata*, in the form of issue estoppel does not arise in the present set of circumstances. Here the defendant is claiming that the Ipoh Sessions Court lacks territorial jurisdiction to hear this action. Miss Goh, counsel for the defendant, explained that by virtue of s. 59(2) of the Subordinate Courts Act 1948, to be read with the High Court of Malaya's Practice Direction number 4 of 1993, the Sessions Court in Ipoh has no territorial jurisdiction to hear matter arising outside its territorial limits. It can only try civil, as well as criminal, matter within the vicinity of Ipoh and certain designated areas. Since the subject matter occurred in either Mentakab or Kuala Lumpur and the defendant's registered office is in Kuala Lumpur, the action ought to be transferred to Kuala Lumpur. This approach, accordingly to Miss Goh, was not taken up before, nor was this issue considered and determined by Justice Mohtar Abdullah at the High Court at Ipoh. She added that this jurisdictional limits of the subordinate courts could not even have been anticipated during the previous hearing in the High Court. It was only when the case was transferred to the Ipoh Sessions Court that this matter became apparent.

**Issues**

Though the first prayer in the defendant's application is for stay, and transfer of proceedings is only pleaded in the alternative, I am of the view that in order to settle these issues the following questions must be posted and answered in the following order of priority:

1. Has the Sessions Court in Ipoh territorial jurisdiction to try the action which subject matter took place in Pahang and the defendant's registered office is in Kuala Lumpur?

2. Is the application by the defendant to transfer the action *res judicata*?

3. Even if the Ipoh Session Court has no territorial jurisdiction and the application to transfer is not *res judicata* has the Sessions Court judge power and authority to transfer the action to the Sessions Court in Kuala Lumpur?

**Analysis**

First Question

To fully appreciate the argument advanced by Miss Goh, I must set out the relevant provisions cited.

Section 59(2) of the Subordinate Courts Act says that:

> Subject to this Act or any other written law, a Sessions Court shall have jurisdiction to hear and determine any civil or criminal cause or matter arising within the local limits of jurisdiction assigned to it under this section, or, if no such limits have been assigned, arising in any part of the local jurisdiction of the respective High Court.

"Local limits", according to Miss Goh, is set out in the High Court Practice Direction 4 of 1993. There, the then Chief Justice of Malaya assigned to the Ipoh Sessions Court territorial jurisdictional areas of: Ipoh, Batu Gajah, Parit, Kampar, Sitiawan, Lumut, and Pantai Remis.

These areas designated to the Ipoh Sessions Court are certainly not the place where the cause or matter in this action arose. It was in either Mentakab or Kuala Lumpur. Unlike the High Court of Malaya sitting in various capital cities and towns in Peninsular Malaysia, the Sessions Courts throughout the country do not enjoy concurrent territorial jurisdiction of each other. Though they are set up by His Majesty, the Yang di-Pertuan Agong under s. 59(1) of the Subordinate Courts Act, territorial jurisdictional boundaries are allocated to them. This is declared in s. 59(2) of the Subordinate Courts Act which says that the Sessions Court shall "to hear and determine any civil or criminal cause or matter **arising within the local limits of jurisdiction assigned to it**" (emphasis added). The High Court of Malaya does not have such restriction except that it cannot go beyond the shores of the Malay Peninsular, *vice versa* with the High Court of Sabah & Sarawak whose territorial jurisdictional limits are confined to the two states in East Malaysia. But within each of the High Courts' territorial limits, a High Court judge has concurrent and co-ordinate jurisdiction to try cases as his counter-part in another city or town where there is a High Court. The rational for this is, as explained by Justice Lim Beng Choon in *Sova Sdn Bhd v. Kasih Sayang Realty Sdn Bhd* [1988] 2 MLJ 268 at p. 270, the two respective High Courts have many branches. Thus a judge sitting in the High Court of Malaya at Kuala Lumpur has the same power and right to try a matter or cause arising in another part of West Malaysia. This set up is therefore different from the subordinate courts. The subordinate courts have the restriction of local limits of jurisdiction assigned to them. When a cause on matter arose outside its local limits then it has no jurisdiction to hear the substantive matter.

By these reasoning, I agree with the defendant's submission that the Ipoh Sessions Court has no territorial jurisdiction to hear the action.

**Second Question**

The law on *res judicata* is succinctly analysed and set out by Justice Peh Swee Chin in the Federal Court judgment of *Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd* [1995] 3 CLJ 783 where two categories of *res judicata* are classified: issue estoppel and cause of action estoppel. Obviously what is raised before me, by the plaintiff to ward off this appeal, is issue estoppel. This is where a party is estopped from raising in a subsequent proceeding an issue decided before. The test to be applied for determination of such matter, in my view, is the broader approach accepted by the Federal Court in the *Asia Commercial Finance*'s case where the dictum of Sommervell LJ in *Greenhalgh v. Mallard* [1947] 2 All ER 255 was adopted. It is:

> ... *res judicata* for this purpose is not confined to issues which the court is actually asked to decide, but ... it covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them.

Though there was an application of a similar nature before the High Court in this case but the circumstances is now different. Since the shift of venue of this case to the subondinate court from the High Court, one new factor for consideration of such application has emerged. This did not exist when the application was before the High Court. This is the territorial jurisdictional limitation of the subordinate courts. As expressed in the earlier part of this judgment, the Ipoh Sessions Court cannot try cases outside the areas specified in High Court Practice Direction Number 4 of 1993. This was not an issue before Justice Mohtar Abdullah for he was not handicapped by jurisdictional limitation. In fact, I do not think that anyone could have anticipated this element at the High Court hearing for transfer to raise it then. This is certainly a new matter, not one that could have been contemplated preciously.

By these reasons, I am of the view that *res judicata* does not apply in this case.

**Third Issue**

With the first and the second issues settled in the negative, the final question left to be decided is: whether the Ipoh Sessions Court judge should have allowed the defendant's prayer for a stay of proceedings. But this is obviously dependent, in the circumstances of this case, on whether a transfer of the action is allowed. Though, as disclosed earlier, the request for stay of proceedings precedes the prayer for transfer, I am of the view that the latter should be considered first before former in order to provide justification for a stay, if it is allowed.

Dealing with the first question of whether the Sessions Court should have transferred the action to the Sessions Court in Kuala Lumpur, one must not loose sight of the new amendment to the Rules of High Court in the fashion of O. 92 r. 3A. Though s. 3 of the Third Schedule of the Subordinate Courts Act permits a Sessions Court judge to transfer "any proceedings to another court of co-ordinate jurisdiction", O. 93 r. 3A(3) imposes a pre-condition. It requires a judge or magistrate to:

> Before making any order to transfer any proceedings from the subordinate court to a High Court or from a High Court to a subordinate court or from a subordinate court to another subordinate court, the Chief Judge shall take into consideration whether the High Court or the subordinate court which shall hear the case is located at or nearest to the place where:
>
> (a) the cause of action arose;
>
> (b) the defendant, or one of the several defendants, resides or has his place of business;
>
> (c) the facts on which the proceedings are based exist or are alleged to have occurred; or
>
> for other reasons it is desirable in the interest of justice that the proceedings should be had.

Thus by the reading of this rule, the entire process for consideration of a transfer of a case from one court to another, be that the High Court or subordinate court, is now taken over by the Chief Judges of the High Courts. Once consent is obtained from or refused by the respective Chief Judges, the presiding judge or magistrate of the case would only need to complete the mechanical process of either ordering or refusing an application for transfer before him.

Miss Goh, in her enthusiasm to succeed in this appeal so that the action can be transferred to Kuala Lumpur, attempted to influence me that the rule cited have no application to matter litigated in the subordinate court. She boldly pointed out that such rule is not found in the Subordinate Courts Rules, it only appears in the Rules of High Court.

I am not attracted by this approach for O. 1 r. 4(1) of the Subordinate Courts Rules declares that:

> in any matter of procedure or practice not provided for in these rules, the procedure and practice for the time being in use or force in the High Court shall, as near as may be, be followed and adopted.

This therefore demands adherence of the subordinate courts to the Rules of High Court when the Subondinate Courts Rules is silent.

As consent from the Chief Judge in this action has not been obtained, I am of the view that the Sessions Court has no authority, presently, to entertain the prayer for transfer of the action to Kuala Lumpur. The application for transfer must be referred to the Chief Judge of Malaya.

When the matter is to be forwarded to another deciding authority, should a stay of proceedings be granted pending the outcome of this forum? To evaluate this, one must probe into the objective of the courts in granting a stay.

Accordingly *Halsbury's Laws of England*, 4th edn at para. 437 this process is made:

> to avoid the trial or hearing of the action from taking place, where the court thinks it is just and convenient to make the order, to prevent undue prejudice being occasioned to the opposite party or to prevent the abuse of process ... And is made generally in the exercise of the court's discretionary jurisdiction.

With this as a guide, I think that the situation of this case justifies and warrants a stay of proceedings to be granted pending the defendant's application to the Chief Judge of Malaya to transfer the action from the Sessions Court in Ipoh to the Sessions Court in Kuala Lumpur, or to which ever place the Chief Judge thinks fit and proper. Otherwise the decision of the Chief Judge, if favourable, may be rendered nugatory and the defendant would be prejudiced.

**Conclusion**

By my reasons aforesaid, I hereby allow this appeal. The order of the Sessions Court handed down on 4 September 2001 be set aside and the application for stay of proceedings by the defendant be allowed until the decision of the Chief Judge of Malaya on whether to allow transfer of this action, which application to the Chief Judge must be made by the defendant within seven days from date of this order. There shall be cost to the defendant/appellant in this appeal.